

ORIGINAL

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

OCT 21 2009

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SPOKANE, WASHINGTON

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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

United States, ) Case No.: CV-08-095-FVS  
Petitioner, ) Respondent's Reply to United  
vs. ) States' Opposition to  
John Schlabach, ) Respondent's Rule 11 Motion  
Respondent )

Respondent herein responds to the US opposition to  
respondents rule 11 motion and provides clarification of  
facts.

STATEMENT OF THE CASE

IRS Agent Lopez claims that she is conducting an  
investigation into a possible tax shelter program allegedly  
promoted by Respondent, Schlabach. Schlabach has continually  
denied that he has ever promoted any tax shelter program.

In an attempt to collect some evidence to prove her theory,  
Lopez issued an administrative summons to Schlabach. After

1 Schlachach made several objections, this Court finally ruled that  
2 Schlachach must appear before Lopez and give testimony regarding  
3 this alleged tax shelter program. Schlachach fully complied with  
4 the Court's order on June 24, 2009, by appearing before Lopez  
5 and answering questions for over three and one half hours.  
6 Schlachach provided Lopez with all the documents he has/had  
7 pursuant to the summons.

8 Lopez's questions at the summons hearing were not focused  
9 on any alleged tax shelter program but instead on Capital  
10 Holdings, which was nothing but a scam business put together to  
11 operate a Ponzi scheme used to cheat "investors." Capital  
12 Holdings was not a tax shelter program. Schlachach had nothing  
13 whatsoever to do with this scam and this fact has been testified  
14 to, and has been adjudicated in federal court.

15 After realizing that there was no evidence to support  
16 Lopez's theory, the United States now claims that Schlachach  
17 failed to comply with the summons listing eight (8) items in its  
18 second Status Report dated September 14, 2009, which Schlachach  
19 has allegedly failed to provide. Further, the United States  
20 failed to serve Schlachach with this second Status Report and has  
21 ignored Schlachach's attempts to resolve any remaining issues by  
22 failing to respond to Schlachach's letter attached as part of  
23 Schlachach's Status Report.  
24  
25

1 The truth of the matter is that Schlabach has no documents  
2 responsive to a "tax shelter program" because there is no such  
3 program; therefore it stands to reason that he would be unable  
4 to provide any documents that support this allegation.

5 In its Memorandum in Opposition to Respondent's Rule 11  
6 Motion, the United States continues in its attempts to mislead  
7 this Court by claiming that Schlabach "[f]ailed to produce any  
8 documents in response to the administrative summons." By way of  
9 Affidavit, Schlabach has testified that he has produced all the  
10 documents he has relative to the summons. Simply because he  
11 does not have all documents the government believes should exist  
12 does not imply a "failure to produce" any such documents.  
13 Phrasing Schlabach's compliance in this manner is a direct  
14 attempt to prejudice the Court against Schlabach, who wants  
15 nothing more than this summons to be completed.  
16

17 The United States claims "Schlabach also refuses to answer  
18 any questions regarding his employment or income from 2000 to  
19 the present." Schlabach was never asked about his income from  
20 2000 to the present. Opposing counsel is deliberately  
21 attempting to mislead this Court as questions relating to income  
22 are not even mentioned in the summons. Additionally, the United  
23 States claims "[Schlabach] also failed to provide any of his  
24 bank records, or even to identify the bank he uses." Schlabach  
25

1 was never asked where he banks and the request for personal bank  
2 records are not mentioned in the summons.

### 3 EMPLOYMENT HISTORY

4  
5 Schlachach's Fifth Amendment claim regarding his employment  
6 from 2000 to the present was based on his fear that such  
7 information might become the starting point in a criminal  
8 investigation against him. It is evident from the record that  
9 the IRS has completely invented an "abusive tax shelter program"  
10 theory, which Schlachach was allegedly promoting, without any  
11 credible evidence to substantiate this theory. When Lopez told  
12 Schlachach that his answers regarding his employment could not be  
13 used as a starting point in a criminal investigation against him  
14 she refused to put it in writing. Schlachach does not trust her  
15 word alone and has consistently demanded some sort of written  
16 acknowledgment from the IRS that his responses to questions  
17 regarding employment will not become the starting point in a  
18 criminal investigation against him.  
19

20 Further, the summons and declaration of agent Lopez  
21 mentions nothing of employment history or income, and Schlachach  
22 contends that these questions are beyond the scope of the  
23 summons. This is further evidence of the "ever expanding scope"  
24 of this summons. Clearly, if the summons is for the purpose of  
25 "investigating a possible tax shelter program" as agent Lopez

1 claims, then Schlabach's work history has nothing whatsoever to  
2 do with such an investigation.

### 3 BANK RECORDS

4  
5 The IRS summons requests, at item 7, information regarding  
6 "All documents for your financial accounts including but not  
7 limited to bank statements, ..." Schlabach contents that this  
8 is not requesting "personal banking information."

9 The term *Financial Accounting* is defined as a "Field of  
10 accounting that treats money as a means of measuring economic  
11 performance in stead of (as in cost accounting) as a factor of  
12 production. It encompasses the entire system of monitoring and  
13 control of money as it flows in and out of the firm as assets  
14 and liabilities, and revenues and expenses."

15 BusinessDictionary.com. Black's law dictionary defines  
16 *financial* as "Fiscal. Relating to finances." And *accounting* as;  
17 "An act or a system of making up or settling accounts,  
18 consisting of a statement or account with debits and credits  
19 arising from relationship of parties." These definitions are  
20 consistent with the summons as agent Lopez is asking for  
21 accounting records of entities that Schlabach has already  
22 testified do not even exist.

24 Schlabach does not intend to, by assumption, expand the  
25 scope of the summons to include items not specifically

1 requested. Further, Schlabach contends that if the summons was  
2 requesting personal banking information it would have stated  
3 "personal banking information" not a term more appropriately  
4 associated with a firm, organization or trust. Schlabach  
5 therefore contends that his personal bank information is beyond  
6 the scope of the summons and supporting declaration of agent  
7 Lopez.

8 There is simply no basis for Lopez requesting Schlabach's  
9 personal banking information as Lopez's declaration claims that  
10 she is investigating a "possible tax shelter program" and the  
11 Court's order required Schlabach to appear and testify in regard  
12 to this alleged tax shelter program - which he did.

#### 14 **FURTHER TWISTING THE FACTS**

15 At the summons hearing Schlabach was asked about documents  
16 relating to Capital Holdings. His response was that he provided  
17 everything he had to the government's attorney handling the  
18 forfeiture action of that case. Schlabach also testified that  
19 after the forfeiture was over any documents he had were  
20 destroyed as they were no longer needed. Now, opposing counsel  
21 makes the wild assertion that Schlabach had documents which he  
22 gave to a private attorney and demands the name of this  
23 attorney.  
24  
25

1 This is yet another example of how the United States has  
2 twisted facts, or possibly just not paid attention to what  
3 Schlabach has testified to. Either way, this shows how nearly  
4 everything Schlabach testifies to is twisted around by the  
5 United States to become some sort of conspiratorial, clandestine  
6 attempt to evade providing documents or information.

7 Schlabach has testified to this court, to the agent, and to  
8 opposing counsel that he has no such documents as requested, all  
9 to no avail. Schlabach also testified that the documents  
10 relative to Capital Holdings, which was not a tax shelter, have  
11 been given to the government. This is yet another reason Rule  
12 11 sanctions are applicable in this case.

13  
14 **SANCTIONS ARE APPROPRIATE IN THIS CASE**

15 The fact that the government is now only arguing the point  
16 of employment, personal bank records and now this erroneous  
17 conclusion that some documents were given to a private attorney,  
18 demonstrates that the other items mentioned in the motion for  
19 contempt have been satisfied and continual requests are  
20 sanctionable.  
21

22 Opposing counsel never attempted to correct the failure to  
23 serve its second Status Report pursuant to Rule 4, FRCP.  
24 Contending that Schlabach did not follow the rules pursuant to  
25 his Rule 11 motion, opposing counsel continues to ignore the

1 requirements of service. The safe harbor rule is satisfied  
2 since it has been 21 days since opposing counsel was notified of  
3 this defect in service yet he has never attempted to correct  
4 this error. Further, opposing counsel was made aware of the  
5 forged and fraudulent document used as the basis for Lopez's  
6 summons yet this has not been addressed in any of the United  
7 States responses. This fraudulent document should be stricken  
8 from the record. Opposing counsel has done nothing to remove  
9 this fraudulent document and continues to rely upon it. This  
10 fraud continues to mislead this Court, which is sanctionable.

11 That fact that opposing counsel assisted Lopez in preparing  
12 the summon's attachments makes him aware of its content, and no  
13 employment history was ever asked for as part of the summons.  
14 No personal bank records were requested in the summons. No  
15 attorney records were requested in the summons. Yet now these  
16 are the topics of his motion for contempt and the objections to  
17 the rule 11 sanctions.

18  
19 Opposing counsel deliberately mislead this honorable Court  
20 from the onset and now continues to ask for the same information  
21 he knows does not exist, or that which is not part of the  
22 summons, supporting declaration of agent Lopez, or this Court's  
23 order.



1 **CONCLUSION**

2  
3 The United States has mislead this Court from the beginning  
4 and now continues to do so by: (1) Introducing and maintaining  
5 fraudulent documents in evidence, (2) Requesting information not  
6 in the summons and not relevant to the summons or this Court's  
7 order, (3) Repeatedly requesting documents known not to exist,  
8 (4) Requesting documents which are already in the custody of the  
9 government, completely ignoring (or misunderstanding)  
10 Schlabach's testimony, (5) Portraying Schlabach's inability to  
11 produce documents that do not exist as contemptuous behavior,  
12 and (6) Failing to properly serve Schlabach with the second  
13 Status Report pursuant to Rule 4, FRCP, and failing to correct  
14 this lack of service even after being made aware of it. Rule 11  
15 sanctions are applicable in this situation.

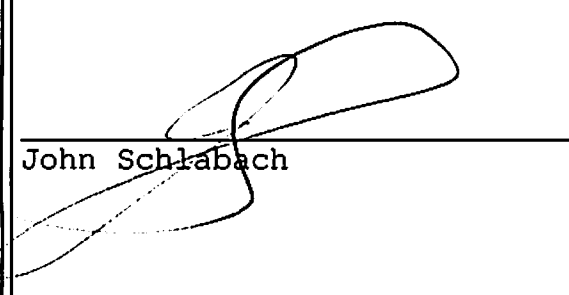
16  
17 It is perfectly clear why documents supporting the alleged  
18 tax shelter program do not exist and cannot be produced - simply  
19 put, there is no tax shelter program, abusive or otherwise.  
20 Schlabach has not promoted any such program.

21 WHEREFORE Schlabach again moves this Court to impose  
22 sanctions against opposing counsel, purge any contempt against  
23 Schlabach, and rule that the summons has been fully complied  
24 with. In the alternative Schlabach moves that the Court set a  
25 date for a hearing where agent Lopez will be made to appear,

1 along with her notes, so that final disposition of this summons  
2 may be determined, and for the Court to consider oral arguments  
3 relative to imposing sanctions against the United States.

4 That the hearing should be scheduled at a time when all  
5 parties are available.

6 Respectfully submitted this 20 day of October 2009 by;

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11 John Schlabach  
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**CERTIFICATE OF SERVICE**

I, John J Schlabach, do hereby certify and declare under penalties of perjury, under the laws of the United States of America, that a true and correct copy of the foregoing Respondent's Reply to United States' Opposition to Respondent's Rule 11 Motion, was served the parties BY sending a copy VIA first class mail or by courier to the following persons at the addresses listed below:

U.S. Department of Justice  
Michael Roessner  
P. O. Box 7238, Ben Franklin Station  
Washington, D.C. 20044

John J Schlabach